New challenges for humanitarian protection

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The fourth Geneva Convention, adopted 50 years ago, on 12 August 1949, describes the actions that warring parties must take to protect civilian populations from the worst excesses of war. Building on the concept developed in the previous three conventions—that certain activities and people, especially civilians, can be seen as hors de combat—the fourth Geneva Convention defines in detail the many ways in which civilians must be dealt with to shield them from the direct and indirect effects of conflict between combatant forces. Among the responsibilities that this convention sets for the warring parties are explicit actions that would grant medical personnel, and all aspects of the medical enterprise, complete protection from interference or harm. This neutral status for medical relief (and, by extension, all humanitarian aid) rests on the reciprocal assumption that those who deliver this relief are practising in accord with their professional ethics and will take specified steps to maintain their neutral posture vis à vis the warring parties.

The moral impetus for this addition to the Geneva Conventions derived from international reaction to the great civilian death toll of the second world war. In virtually all wars of the subsequent 50 years the fourth Geneva Convention has been variously observed and routinely violated—and there has been no calling to account. Moreover, and this is what prompts new attention to the issue of humanitarian protection in war, in recent wars the warring parties have shown an increasing tendency to flout the fourth convention entirely. The problem is no longer a failure to abide by the rules but a failure to acknowledge that the rules even exist.[1]

This failure is particularly relevant for the medical community. Without the guarantees of protection defined in the fourth convention, civilians can be slaughtered with impunity and physicians and other relief workers swept up in the ensuing carnage. Once the notion of civilian protection is abandoned, the terrain of war is changed utterly. At the very moment we celebrate the 50th anniversary of the Geneva Conventions, we find that effective respect for humanitarian protection has reached its nadir.

Summary points

- Under the fourth Geneva Convention of 1949 protection of civilians in war is accomplished by distinguishing civilian from military targets, on the assumption that the military interest is best served by attacking only military opponents
- This assumption breaks down in today's wars, where irregular armies deliberately target civilians
- Various strategies are being pursued to re-establish civilian protection and provide neutral space where medical and aid workers can deliver relief
- Physicians should participate with potential actors in developing and implementing these strategies

Traditional approach to humanitarian protection

The traditional legal effort to protect civilians in war has long centred on distinguishing between civilian persons or objects and military targets. This approach was based on two key assumptions: that attacking civilian targets would provide little military advantage; and that, quite apart from their legal or moral obligations, parties to a conflict would thus seek to optimise their resources by targeting military assets. Therefore the most effective approach to protect civilians in international legal treaties on the conduct of war would be to build on this assumed basic military preference and promote the concept of civilian distinctiveness. This approach has inspired the development of international humanitarian law since its inception.

A corollary of this approach is to designate the armed forces of the warring parties as the principal implementing agents of the protection. International humanitarian law states that those who seek to be protected cannot engage in any hostile activities without losing their protected status. If the armies confirm that the civilians are abiding by these constraints then the armies are obliged to ensure that the civilians are indeed protected. An essential element of this legal regime therefore is the commitment of the parties to the conflict to abide by the rules.

Intensified threats to protection of civilians

The traditional approach taken by international humanitarian law thus rests on a particular and rational view of military interests and behaviour.

However, military strategies from the second world war onwards have departed significantly from this classic perception of the non-military worth of civilian assets. The bombardments of London, Rotterdam, Dresden, Hamburg, Hiroshima, and Nagasaki in the second world war were only the precursors of military tactics aimed at obtaining significant military advantage from the destruction, terror, flight, and chaos caused by attacks on civilians. In the 54 years since 1945, civilians have constituted the overwhelming majority of war casualties.[2] What has evolved now, with the waning of the cold war, is a pattern of deliberate war against civilians, waged by relatively untrained forces wielding relatively light arms.[3] Civilian populations have come to acquire a strategic importance, including:

- As a cover for the operations of rebel movements
- As a target of reprisals
- As a shield against air or artillery attacks
- As a lever for exerting pressure on the adverse party, by terrorising and displacing populations, or even
- As a principal target of ethnic cleansing operations and genocide.

In internal conflicts civilian populations are caught in the crossfire between insurgents and state forces and bear most of the casualties. In extreme situations (Rwanda 1994; Bosnia-Herzegovina 1992-4; and Kosovo 1998-9) entire segments of the civilian population have been perceived as a primary military target. Civilian deaths in just these three wars amount to over 1 million people—far greater than the estimated military casualties.

Death is not the only outcome of a war strategy that targets civilians. In the past decade armed conflict has turned over 40 million people into refugees or internally displaced people. The consequences of such displacement are severe and include:

- Breakdown of the social fabric and disintegration of communities
- Production of chaotic situations, where the mixture of civilians and combatants puts civilians at risk and endangers medical and humanitarian relief workers
- Disruption of family groupings, exposing women and girls to sexual violence, prostitution, and sex trafficking
- Forced military recruitment of children, sending those as young as 7 years old into battle.

In addition, warring factions have increasingly denied civilian populations access to humanitarian relief. They defend their actions by appealing to the principle of national sovereignty. Within their national boundaries these warring parties block relief convoys, obstruct ambulances, invade hospitals, destroy clinics, and harass and terrorise national and international medical and other humanitarian relief workers.[4–8] In these circumstances the assumption in international humanitarian law that civilians would be protected simply by establishing their distinct non-military character seems outdistanced by recent changes in warfare and thus fundamentally flawed. In the absence of alternative credible and effective enforcement mechanisms, it would seem that the international community can offer little help to civilian populations targeted in today's wars.

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Dresden in 1944—obtaining military advantage through attacking civilians

Possible new strategies

The international community has thus been compelled to reconsider its approach towards protecting civilians. When states or parties to conflicts are unable or unwilling to protect civilians during armed conflict, the international community must develop specific mechanisms to ensure that protection. To that end, new strategies are being developed to expand the concept of humanitarian protection and to consider new alliances with other potential enforcement agents, including the United Nations Security Council and regional organisations and their military outfits.

Accordingly, human rights and humanitarian organisations are pursuing three distinct strategies to bolster the protection given to civilians: reasserting the role and validity of international humanitarian law, and developing new judicial implementation mechanisms; expanding the scope of humanitarian protection; and diversifying the implementation strategies of humanitarian protection, involving the use of various diplomatic and coercive measures, including the use of force under chapter VII of the UN Charter.

Reasserting the role of international humanitarian law

The first strategy has been to recall the objectives of international humanitarian law and promote further efforts nationally and internationally for enforcing these rules. International humanitarian law is seen as essential in determining the illegal character of violence perpetrated against civilians in war. It should therefore be at the centre of any strategy to protect them and to restore the integrity of international law. The proponents of this approach, particularly the International Committee of the Red Cross, acknowledge that war has changed and that civilians have increasingly become the objects of attacks. In their view, however, violations of law do not necessarily signify its obsolescence. On the contrary, international humanitarian law remains highly relevant in contemporary conflicts (such as instances of ethnic cleansing and failed states) and serves to mobilise considerable efforts to further its application.

The key focus of these efforts has been to strengthen international judicial institutions. The culture of impunity that shelters individuals responsible for violent assaults against civilians is one of the biggest obstacles to protecting civilians in most conflicts. The unwillingness or inability of states to bring these people to justice undermines the effectiveness of the entire legal framework. An international remedy for such situations has been identified in the establishment of an International Criminal Court and the creation of the two ad hoc tribunals for the former Yugoslavia and for Rwanda by the UN Security Council.

Action from professional groups

Professional groups, including lawyers, doctors, and journalists, have also played a part in reinforcing traditional mechanisms of protection by recalling the legal obligations of parties to armed conflicts under humanitarian law. The successes of "sans-frontières" non-governmental organisations, such as Medecins Sans Frontières, International Commission of Jurists, or Reporter Sans Frontières, is a demonstration of this mobilisation of professionals. The medical and public health communities, through international societies, human rights groups, or relief agencies, played a pioneering role here, taking a strong interest in upholding established international principles of human rights in relation to medical ethics and international humanitarian law and in documenting violations. Beginning with the founding of the World Medical Association in 1947, the world's national medical societies have tried to uphold professional norms in the face of potential or actual confrontation with developments in peace and war. An early leader was the British Medical Association, which in the 1980s spurred organised medicine to combat the participation of physicians in torture.[9 10]

Physician based human rights organisations have sought to provide governments and judicial bodies with evidence of major violations of the Geneva Conventions during conflict or civil war in the West Bank and Gaza in 1988-90,[11] Somalia in 1992,[12] Bosnia-Herzegovinia in 1992-5,[13] Rwanda-Eastern Congo in 1994-7,[14] and Kosovo in 1998-9.[15] A major effort is now underway among several such organisations to provide documentary and forensic evidence to the international criminal tribunals of Yugoslavia and Rwanda.

MARTIN ADLER/PANOS PICTURES

Boy soldiers training as guerillas in El Salvador—worldwide an estimated 300 000 child soldiers are involved in armed conflicts

Relief organisations, under increasing public scrutiny and subject to ever more frequent danger in the field, have also realised that they must educate their staff in the principles of human rights and international humanitarian law.[16] Their staff will thus operate within internationally respected norms and know what should be expected from warring parties and the international community in terms of humanitarian protection.

Expanding the scope of humanitarian protection

The need to expand the scope of humanitarian protection arises directly from the changing nature of war. Were civilians not terrorised into fleeing from their homes, issues relating to internally displaced people would be less acute. Were regular forces fighting according to standard rules of weaponry, the proliferation of unmarked antipersonnel landmines would be less of a problem. Were children not being forcibly inducted into irregular armies and then forced to commit unspeakably brutal acts, the minimum age and its enforcement would not attract such attention.

The increasing involvement, over the past decades, of UN agencies and non-governmental organisations in humanitarian operations has increased the number of humanitarian actors in conflict situations.[17] This in turn has affected the perceived scope of humanitarian protection from one that is basically driven by international humanitarian law to one that is driven by the many needs of specific groups of victims in specific circumstances. Children need caring adults; terrified refugees need to be able to feel safe; people from diverse cultures seek respectful space for religious practice; women in camps should not be forced into prostitution.

The humanitarian community has sought legal confirmation of this needs based expansion by referring to several key human rights documents that it regards as relevant in conflict settings. These include the 1951 Convention Relating to the Status of Refugees, the 1979 Convention on the Elimination of all Forms of Discrimination against Women, the 1984 Convention against Torture, and the 1989 Convention on the Rights of the Child. The insistence that key provisions of these documents do, indeed, apply in a state of conflict[18] has produced a growing recognition that just because people are trapped in war, they do not in any moral sense, and thus should not legally, lose the protection that they could claim if they were living in a country at peace. International humanitarian law remains the primary legal reference in conflicts. Nevertheless, these developments in humanitarian practice and policy, and the new guidelines on internally displaced peoples (which combine elements of human rights law with international humanitarian law) show an encouraging convergence between these two basic ways of defining protections for civilians in war.

The concept of humanitarian protection is also being extended in terms of time frame. International humanitarian law traditionally applies during the

actual conduct of hostilities. From a public health and human rights perspective, however, the phases that lead up to a conflict and the extended reconstruction period afterwards are of equal concern. Issues such as the repatriation of refugees[19] or the status of vulnerable groups, such as women and girls in Afghanistan,[20] become central concerns of those engaged in humanitarian and human rights action in war.

This expansion arises out of a decade of work in which these humanitarian concerns were slowly shaped by bitter experience. The humanitarian community has provided the data that has forced the international legal and political community to develop an expanded scope of protection. As early witnesses to and occasional victims of child soldiers, as surgeons in field hospitals overwhelmed by landmine injuries, or as the only source of help in a region suddenly flooded by internally displaced people, medical relief workers had first to act without the benefit of guidelines and were then compelled to become more systematic. Internal critiques and published reviews of this experience[21] have accelerated our understanding of the complexity of the issues facing those who try to provide relief when established norms of protection are violated and when new forms of attacks on civilians take place in the absence of consensus on what the international community should do next.

International initiatives

To establish this expanded scope of humanitarian protection in the legal and operational sphere is a complex challenge. Three recent initiatives, undertaken at international legal levels and pursued by many humanitarian and human rights organisations, have focused on protecting civilians against the use of antipersonnel landmines, protecting internally displaced persons, and prohibiting the military recruitment of children.

The 1997 Ottawa Landmines Treaty (entered in force in March 1999) bans the use, production, stockpiling, and transfer of antipersonnel landmines. Groups such as the International Campaign to Ban Landmines (comprising many humanitarian and human rights groups) were critical in mobilising states. This grass roots coalition, and others associated with it, has now embarked on monitoring compliance with the treaty and running local landmine awareness campaigns throughout the world.

The forced displacement of people within the borders of their own countries by armed conflicts has become a central feature of the post cold war era. In its classic form international humanitarian law does not protect internally displaced people since they remain primarily under the protection of their own state. Yet some of the worst assaults on civilians in war have taken place against internally displaced people (Srebrenica),[22] and some of the more intractable humanitarian dilemmas relate to supporting those forced to survive away from home but within the borders of their state (Sudan).[23] As a result the United Nations presented "Guiding Principles for the Protection of Internally Displaced Persons" to the Commission on Human Rights in 1998. These combine elements of humanitarian law and human rights law, which recognise, among other rights, a right not to be unlawfully displaced, the right of access to assistance and protection during displacement, and the right to a secure return and reintegration.

UNITED NATIONS

Candles and wreaths mark the site in Ovcara, Croatia, to honour the 200 civilians who were massacred in 1994

Finally, the use of children in armed conflicts has been another dramatic feature of post cold war hostilities. An estimated 300 000 child soldiers are actively involved in armed conflicts around the world.[24] According to both international human rights and humanitarian law, the current minimum age for participation in armed conflict is 15 years. Although the recruitment of children as young as 7 already falls far below this international standard, Unicef and other humanitarian organisations have tried to raise awareness and affect realities on the ground by crafting the Optional Protocol to the Convention of the Rights of the Child. This sets a minimum age of 18 years. This campaign has also highlighted the many difficulties presented by child soldiers: demobilisation, re-entry into society, and education.

Diversifying implementation strategies of humanitarian protection

The expansion of the concept of humanitarian protection has resulted in a more sophisticated understanding of the rights of civilians in times of war. Such protection still relies primarily, however, on the ability and willingness of implementing agents (states, the UN Security Council, and regional organisations such as NATO) to enforce this protection. When warring parties fail to abide by the rules of international humanitarian law, it falls to the international community to enforce them.

The practical importance of this responsibility remains unclear. Proponents of more assertive regimes of civilian protection believe that new political and security strategies are required, to provide more tactical options along a continuum within the current legal framework of the UN Charter's chapter VI (entry with the permission of the sovereign state) and chapter VII ("non-permissive" entry). Such protection strategies need to involve political and military actors, such as the UN Security Council, regional organisations, and specialised agencies (such as the UN Department of Peacekeeping Operations) and would constitute the next generation of international security response to humanitarian crises. The current

rationale for international political and military intervention is based on threats to international peace and security; in the next generation this would also include threats to civilian protection.

Throughout this decade we have been in the midst of that transition. In the former Yugoslavia and Rwanda, the international security regime failed to act decisively to end wars that caused great civilian suffering. Humanitarian and human rights organisations decried the role that international relief organisations were forced to play, filling a power vacuum, assuaging the conscience of the international community.[25] In northern Iraq, in Somalia, and again in Kosovo, various sets of international political and military actors took more aggressive action, in each case different, and in each case with mixed and disputed results.

Discussion and force

As we continue through this transition the humanitarian community, including those in medical relief organisations, must participate in the discussion and develop strategies that would maximise the humanitarian resources available under a given set of political and security constraints. In settings where the consent of warring parties can be obtained such options include establishing humanitarian corridors, delivering targeted relief, planning the safe exit of a population from an emergency, and creating protected areas.

If the warring parties do not consent and civilians continue to be at risk, the international community must consider using force to uphold international humanitarian law. The UN Security Council might consider intervening under chapter VII to re-establish the necessary conditions for providing humanitarian assistance and protecting civilians. These conditions might include creating and enforcing security corridors and areas, protecting humanitarian convoys, disarming populations or groups, and deploying forces to protect civilians. These measures might be particularly relevant in situations that have generated, as a consequence of grave violations of international humanitarian law, major displacements of population and widening social chaos, further contributing to regional and international instability. As in Kosovo, the use of force, in association with diplomatic negotiation, could help to restore a minimal political and security environment, thus permitting delivery of humanitarian assistance and restoration of minimum levels of civilian protection.

Whenever any of these strategies have been attempted during this decade, some humanitarian analysts and practitioners have raised concerns about the mixture of humanitarian and political goals.[26 27] The use of force mandated by the Security Council or regional organisations entails political agendas that may jeopardise the neutrality of protective humanitarian arrangements.[28] Furthermore, the use of force against warring parties may put civilians at even more at risk, as their status and safety become central issues in resolving the conflict. Finally, the extent to which UN Security Council members consider internal conflicts of the magnitude of the Kosovo crisis or the Rwanda genocide to be within the competence of the council remains to be ascertained. The question then arises as to which regional organisation, when, and on what grounds, can be permitted to intervene?

A role for the humanitarian community

Yet many humanitarian organisations, including many engaged in medical relief, have already begun to accumulate experience in humanitarian interventions that involve a mixture of players—civilian, security, and military.[29] The future success of these strategies of humanitarian intervention will depend to a large extent on the ability of humanitarian organisations to engage the interest of political and security authorities in the task of developing clear, adequate, and practical options for protecting civilians.[30] It is also possible that, having participated in and witnessed a series of failures and partial small gains, having played a bit part in a drama determined by others, the humanitarian community could in future decide to play a significant role in mobilising political authorities around specific preferred strategic options.[31] It comes back to the aim of creating in times of war a distinct and neutral place for civilians, where medical and relief workers can reach the population and build a system of adequate supports, sustainable for as long as is necessary. The end is the same as that described in the fourth Geneva Convention of 1949, but the means no longer obtain. The world and its wars have changed, so other means to secure that same high purpose have to be developed and deployed.

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Eugenics and human rights

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During the Nazi era in Germany, eugenics prompted the sterilisation of several hundred thousand people then helped lead to antisemitic programmes of euthanasia and ultimately, of course, to the death camps. The association of eugenics with the Nazis is so strong that many people were surprised at the news several years ago that Sweden had sterilised around 60 000 people (mostly women) between the 1930s and 1970s. The intention was to reduce the number of children born with genetic diseases and disorders. After the turn of the century, eugenics movements—including demands for sterilisation of people considered unfit—had, in fact, blossomed in the United States, Canada, Britain, and Scandinavia, not to mention elsewhere in Europe and in parts of Latin America and Asia. Eugenics was not therefore unique to the Nazis. It could, and did, happen everywhere.

Summary points

- Although eugenics programmes are usually associated with Nazi Germany, they could, and did, happen everywhere
- They focused on manipulating heredity or breeding to produce better people and on eliminating those considered biologically inferior
- In the 1920s and 1930s eugenic sterilisation laws were passed in 24 of the American states, in Canada, and in Sweden
- Eugenics was criticised increasingly between the wars and was attacked widely when its role in the holocaust was revealed
- Many people believed that individual human rights mattered far more than those sanctioned by science, law, and social needs

Origins of eugenics

Modern eugenics was rooted in the social darwinism of the late 19th century, with all its metaphors of fitness, competition, and rationalisations of inequality. Indeed, Francis Galton, a cousin of Charles Darwin and an accomplished scientist in his own right, coined the word eugenics. Galton promoted the ideal of improving the human race by getting rid of the "undesirables" and multiplying the "desirables." Eugenics began to flourish after the rediscovery, in 1900, of Mendel's theory that the biological make up of organisms is determined by certain factors, later identified with genes. The application of mendelism to human beings reinforced the idea that we are determined almost entirely by our "germ plasm."

Eugenic doctrines were articulated by physicians, mental health professionals, and scientists—notably biologists who were pursuing the new discipline of genetics—and were widely popularised in books, lectures, and articles for the educated public of the day. Publications were bolstered by the research pouring out of institutes for the study of eugenics or "race biology." These had been established in several countries, including Denmark, Sweden, Britain, and the United States. The experts raised the spectre of social degeneration, insisting that "feebleminded" people (the term then commonly applied to people believed to be mentally retarded) were responsible for a wide range of social problems and were proliferating at a rate that threatened social resources and stability. Feebleminded women were held to be driven by a heedless sexuality, the product of biologically grounded flaws in their moral character that led them to prostitution and producing illegitimate children. "Hereditarian" biology attributed poverty and criminality to bad genes rather than to flaws in the social corpus.

A drive for social improvement

Much of eugenics belonged to the wave of progressive social reform that swept through western Europe and North America during the early decades of the century. For progressives, eugenics was a branch of the drive for social improvement or perfection that many reformers of the day thought might be achieved through the deployment of science to good social ends. Eugenics, of course, also drew appreciable support from social conservatives, concerned to prevent the proliferation of lower income groups and